

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

GENERAL MOTORS CORPORATION

Claim No. CU - 3087

Decision No. CU - 1863

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by GENERAL MOTORS CORPORATION in the amended amount of \$595,997.80, and is based upon the asserted loss of payment for merchandise shipped to Cuba and the balance due with interest on certain notes of the Cuban Electric Company.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government

of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "National of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record discloses that claimant is a corporation organized under the laws of the State of Delaware. An officer of the claimant corporation has certified that at all times between October 13, 1916, and the presentation of this claim on May 1, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 98.8% of its outstanding capital stock is held by United States nationals.

The record includes copies of claimant's invoices reflecting the sale and shipment of goods to the Consolidated Railroads of Cuba. The terms stated on the invoices are "Net Cash" and the amounts stated on these invoices, including freight and other attendant fees, total \$2,071.64. Claimant has also submitted two credit memos which credit the Consolidated Railroads of Cuba with \$429.80. The invoice and credit memos are numbered and dated as follows:

<u>Number</u>	<u>Date</u>	<u>Amount</u>
59D-83646	August 3, 1959	\$ 354.53
59D-83647	August 3, 1959	59.09
59D-83769	August 8, 1959	1,111.19
59D-83770	August 6, 1969	21.96
59D-83840	August 5, 1959	524.87
59D-95212	September 15, 1959	86.80 (CR)
59D-87969	December 4, 1959	343.00 (CR)

Claimant states that it has not received payment for the merchandise covered by the invoices listed above.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on September 29, 1959, the effective date of Law 568, as to \$1,641.84, the total of the five invoices due prior to September 29, 1959, as reduced by the subsequent credits.

The remaining portion of this claim, for \$594,355.96, is based upon the asserted loss of payment for merchandise shipped to the Cuban Electric Company (Compania Cubana de Electricidad) and the unpaid balance and interest due on certain notes of the Cuban Electric Company.

Section 505(a) of the Act provides:

. . . . A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The records of the Commission reveal that Compania Cubana de Electricidad is a corporation organized under the laws of the State of Florida. Therefore this portion of the claim can be considered only if the claimed debt is a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112.)

Claimant has neither alleged nor submitted evidence to establish that this debt was a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. Therefore the Commission is without authority to consider this portion of the claim, and it is hereby denied.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from September 29, 1959, the date of loss to the date on which provisions are made for settlement thereof.

CU-3087

CERTIFICATION OF LOSS

The Commission certifies that GENERAL MOTORS CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Six Hundred Forty-One Dollars and Eighty-Four Cents (\$1,641.84) with interest thereon at 6% per annum from September 29, 1959, to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAY 15 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)